have, moreover, been made in the more recent volumes, such as preserving the original paging, running the volume number at the head of each left-hand page, and adding the "Reporter" citations to the cases. These are labor-saving devices which are much appreciated by the busy user. F. R. M.

THE RIGHT TO AND THE CAUSE FOR ACTION, both civil and criminal, at law, in equity and admiralty, under the common law and under the codes. By Hiram L. Sibley, Circuit Judge in the Fourth Circuit of Ohio. Cincinnati: W. H. Anderson & Co. 1902.

This is a monograph of somewhat less than a hundred and fifty pages, in which the author undertakes to analyze and define the fundamental terms, "right to action" and "cause for action." Although the courts continually use the terms, they have seldom attempted a comprehensive analysis of their essential elements, and while text-writers have discussed them with considerable care, a great divergence exists in the conclusions reached. To develop a clear conception of the precise meaning properly attachable to these terms, is the purpose of this essay.

Any adequate discussion of the nature of a "cause of action" must necessarily reckon with the well-known analysis of Pomeroy in his pioneer treatise on Remedies and Remedial Rights. And the alleged imperfections in that analysis, form in fact the groundwork of this monograph. A cause of action consists, says Pomeroy, in the combination of two essential elements, (1) a primary right possessed by the plaintiff and a corresponding primary duty devolving upon the defendant; and (2) a delict or wrong done by the defendant which consists in a breach of such primary right and duty. The author makes two criticisms of the view thus outlined; first, that the analysis is unsound; and second, that it does not go farther and differentiate "cause of action" from "right of action." Passing the first point for the present, it is not true that Pomeroy failed to distinguish these two terms, for he expressly states (§453) that what he terms a "right of action" is identical with "remedial right," and (§454) that a "cause of action" is plainly different from a "remedial right," the latter being the consequence or secondary right which springs into being from the breach of the plaintiff's primary right by the defendant's wrong. And he goes on to say that, in many cases, from one cause of action two or more remedial rights or rights of action may arise. Without discussing the merits of this distinction, it undoubtedly exists in the pages of Pomeroy, and he does not, as the author says, quoting a criticism of Phillips to the same effect, use the terms "cause of action" and "right of action" interchangeably.

Two specific aims appear in the essay, one to indicate the proper basis of distinction between a "cause for action" and a "right to action," the other to develop a true theory of the nature of a "cause of action." Confessedly the cases are silent upon the first point, and his reference to text-writers is limited to Pomeroy, Bliss and Phillips, who, he says, are about equally authoritative. After dismissing Pomeroy with the criticism indicated above, and leaving Bliss out of account, for he makes no use of the term "right of action," the author cites Phillips as in a measure suggesting and supporting the views he announces, though he thinks Phillips stopped short of a thor-

oughly logical outcome. But there is in fact, nothing in common between his view and that adopted by Philfips. Phillips says, following Pomeroy exactly, that upon the infringement of a legal right there accrues, *ipso facto*, to the injured party, a right to obtain a remedy, and this secondary or remedial right is called a "right of action" while a 'cause of action," and here he differs from Pomeroy, is the formal statement of the operative facts which give rise to such a remedial right. The former, he says, depends npon the substantive law, the latter upon the law of procedure. In direct conflict with this view, the author contends that the substantive law has nothing whatever to do with either the right to action or the cause for action; but the former consists in the conjunction of a wrong with the law of remedy, while the latter is solely the wrong. The text is not free from obscurity, but this *seems* to be the author's position. Clearly Phillips lends it no support.

The brief discussion of this distinction between a right to action and a cause for action, is followed by a detailed consideration of the nature of a cause for action, which occupies the major part of the book. The author's definition is essentially that of Bliss, making the cause of action equivalent to the wrongful act, but his conception of the complete isolation of the cause of action from the substantive law, is one which Bliss nowhere suggests. It would seem to be an elementary principle of logic that a negative has meaning only by reference to its corresponding positive, and that a negative term absolutely separated from its correlative, is a logical impossibility. An act can be wrongful only in relation to a right which it violates, so that the right and the act, taken together, must logically constitute the wrong.

But aside from this disregard of the entire substantive law, there are many statements to be found in the cases which seem to support the author's view that the wrong itself constitutes the cause of action. And yet, his argument from the cases is open to criticism. Many of his cases were based upon the operation of the statutes of limitation, but it is evident that statutes of limitation are concerned primarily with the *completion* rather than the *constitution* of a cause of action, with its *last* necessary element rather than the *combination* of *all* its elements. Many others arose upon questions of jurisdiction, and here again it is the wrongful act which is chiefly important, for the reason that, ordinarily, it alone, as distinguished from the primary right, is susceptible of localization. In none of these cases is the question squarelv presented as to what constitutes an *entire* cause of action. The exact question has been raised, however, in a nnmber of cases involving the invasion of different rights by a single wrongful act, bnt the author, while asserting an exhaustive investigation of the cases, fails to mention some of the most important of them. Thus the case of *Brunsden* v. *Humphrey*, decided in the English Court of Appeal in 1884 (14 Q. B. Div. 141), containing a most careful and learned analysis of this precise question, and settling the English law on the subject, is not referred to In this case the plaintiff, while driving his cab, was run into by defendant's van, and both his person and his cab were thereby injured. He had first sued the defendant for the injuries to his cab, and had recovered. Subsequently he brought this action for the injuries to his person. The question presented, therefore, was whether there had arisen one cause of action or two; or, in other words, whether the wrongful act alone, or the primary right and the act together, constituted the cause of

action. The court decided in favor of the latter view, thus sustaining Pomeroy's analysis, although a short dissenting opinion by the Chief Justice approved the other theory. This, then, disposes of the numerous English cases cited by the author.

In this country there is more uncertainty. The case of *King* v. *Chicago, M. & St. P. Ry. Co.*, 80 Minn. 83, cited by the author, is directly in point, and fully sustains his position. *Hazard Powder Co.* v. *Volger* (1888), 3 Wyo. 189, not cited by the author, is a case of precisely the same nature, and was decided the same way, while on the other hand, *Smith* v. *Warden* (1885), 86 Mo. 382, also not cited by the author, held, under exactly the same facts, that there were two causes of action. So in the recent case of *Watson* v. *Texas, etc., R. R. Co.*, (1894), 8 Tex. Civ. App. 144, which the author seems not to have found, an injury to both person and property by the same wrongful act, was held to give rise to two distinct causes of action. And the case of *Chicago N. D. Ry. Co.* v. *Ingraham* (1890), 131 Ill. 659, which he cites without comment as supporting his own view, will be seen upon examination to incline rather to the position of Pomeroy. But none of the American cases upon the point can be termed well-reasoned. Even *King* v. *Chicago M. & St. P. Ry Co.*, rests the decision upon the ground of simplicity and directness, and makes no attempt at a comprehensive analysis.

It would seem that a simple reference to the wording of the Codes would be conclusive upon the matter. Most of them provide that the complaint shall contain, among other requisites, "a plain and concise statement of the facts constituting a cause of action, without unnecessary repetition." And a demurrer may be filed to a complaint which does not contain these facts. Any facts, then, the absence of which from the complaint will give ground for a general demurrer, are essential to a cause of action, and it is clear that the two classes of facts which must be stated are: (1) Those showing the plaintiff's primary right (except in those cases where the law presumes it); and (2) those showing the infringement of this right by the defendant. The cause of action, as the term is employed to the American codes, must then consist of these two elements.

The author has made a serious study of the subject, and his monograph contains many illuminating suggestions and new points of view. While, therefore, we do not think his logic faultless or his research exhaustive, he has thrown much uew light upon a subject which is at once fundamental and elusive, and his book is well worth perusal.

EDSON R. SUNDERLAND

"CYCLOPEDIA OF LAW AND PROCEDURE." Edited by William Mack and Howard P. Nash. The American Law Book Company: New York. Butterworth & Company: London.

The impossibility of giving, within the limits ordinarily set to a review, anything like an adequate idea of so extensive a compilation as the "Cyclopedia of Law and Procedure," will be at once apparent to the reader. The work is of large proportions. Four volumes have already been issued, the first three of which are before us. Some idea of the extent of the work in complete form may be gathered from the fact that the subjects (in alphabeti-